



supports a finding of an employer/employee relationship between claimant and respondent. Therefore, the Kansas Workers Compensation Act applies to this claim.

Claimant suffered a heart attack while installing a fence. Respondent contends the "heart amendment" to K.S.A. 44-501 precludes an award for workers compensation benefits. K.S.A. 1996 Supp. 44-501(e) provides:

"Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment."

Claimant points to several factors in support of his contention that unusual exertion has been established, including the following:

- (1) During the approximately two years claimant worked for respondent putting in fences and pole barns, he seldom dug postholes by hand.
- (2) On the date of injury, the power digger/auger which claimant customarily used was broken and claimant was forced to dig the fence postholes by hand.
- (3) Claimant had never before put up an entire fence by hand.
- (4) Claimant customarily had another laborer helping him put in fences but on June 20, 1996 he was working alone.
- (5) The temperature on June 20, 1996 was in the 90s with a heat index in excess of 100 degrees.
- (6) Claimant was also using a 60-pound steel cut off saw which he had never used before.

Claimant's Exhibit No. 1 to the preliminary hearing transcript is a January 21, 1997 report by Louis S. Morgan, M.D., one of claimant's treating physicians. Dr. Morgan opines "it was the unusual weather conditions and the physical stress of working by hand instead of machine that was, in my opinion, the cause of his heart attack on that day." There is no conflicting medical opinion in the record as it currently exists.

The Appeals Board finds the exertion claimant was performing at the time of his heart attack was more than his usual work and that his heart attack was precipitated by the physical labor requirements of his job. Therefore, the Appeals Board finds claimant has

met his burden of proving a compensable injury which arose out of and in the course of his employment with respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated January 29, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

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BOARD MEMBER

c: Peter John Orsi, II, Wichita, KS  
James A. Cline, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director